

### **REMARKS/ARGUMENTS**

This amendment is submitted in response to the Office Action dated February 15, 2005. Claims 12-18 are pending in the application. Upon entry of this amendment, claims 12, 13, and 15-18, will be pending in the application. Claim 14 has been canceled. Claim 12 has been amended to incorporate the limitations from claim 14. Claim 16 has been amended to depend upon a non-canceled claim.

Reconsideration and allowance is respectfully requested in view of the amendments made and the remarks made below.

#### **1. Summary of the Interview**

The Applicant would like to thank the Examiner for the interview on January 9<sup>th</sup>, 2005. At that time claim 12 was discussed in light of the GB 2312366 reference used in the Office Action of September 14, 2004. It was concluded that the GB 2312366 reference did not contain a styptic material as required in the claim. The Examiner subsequently withdrew that rejection and issued the Office Action of February 15, 2005. It is this Office Action, which is now addressed in this response.

#### **2. Priority**

The Office Action indicates that the instant application lacks the necessary reference to the prior application from which this application is a division of. The Applicant respectfully submits that reference was made to the prior application in the preliminary amendment filed on March 11, 2004. The Applicant believes that the preliminary amendment accomplished the goal of providing the necessary reference. The Applicant requests clarification as to whether or not the preliminary amendment accomplished this goal.

#### **3. The Rejections Under 35 U.S.C. § 102(b)**

Claims 12, 13, and 15 were rejected in the Office Action under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,292,203 to Whitman (hereinafter "Whitman"). The

Applicant has amended claim 12 to have a rigid application surface that is adjacent to the dispensing opening, wherein the rigid application surface is concave. The Applicant submits that Whitman does not disclose having a rigid application surface that is concave.

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently describe, in a single prior art reference.” *Verdegaal Bros. V. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

Whitman discloses a self-sealing substance dispenser having a chamber 18 and an opening 13 that is used in the dispensing of a substance 28. Top cap 20 has a flat surface. There is no real application surface on Whitman, although the Examiner refers to top cap 20 as the rigid application surface. Instead of having an application surface, the Applicant notes that in Whitman substance 28 is dispensed to an insertable article 11 that is placed inside chamber 18. See Fig. 3 and col. 3, lines 28-35. Even if top cap 20 was broadly interpreted as being an application surface, it is not concave in shape. Furthermore, the application surface in claim 12 has to be separate from the container, while it appears that any application surface in Whitman, if any, would have to be part of chamber 18, since article 11 is inserted into chamber 18.

Therefore, the Applicant respectfully submits that Whitman does not meet the limitations of claim 12 and that the rejection should be removed. Furthermore, claims 13 and 15 are in condition for allowance by virtue of their dependence upon allowable claim 12.

Claims 12, 14, 16, and 17 were rejected in the Office Action under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,747,842 to Dietz (hereinafter “Dietz”). Claim 14 has been canceled and its limitations have been incorporated into claim 12. The Applicant respectfully submits that Dietz does not meet every limitation of newly amended claim 12. In particular, the Applicant submits that Dietz does not have a rigid application surface that is concave.

Dietz discloses a receptacle 10 that is formed of a tubular body 12 and a cavity 14. Cavity 14 has depression 28, which is angled in order to receive a dog’s bleeding nail. The Office Action refers to surfaces 24 and 28 as the rigid application surfaces. However, the Applicant submits that surfaces 24 and 28 are part of the container itself and are not separate from the container. Claim 12 requires a container, a dispensing opening in the container, and a concave rigid application surface. A proper reading of claim 12 requires that the application

surface be separate from the container, as shown in Figures 3-5 and 7, not one and the same thing. The Office Action is mistakenly using the receptacle in Dietz to be both the container and the rigid application surface when the claims clearly require both a container and a rigid application surface. At best Dietz merely discloses having a container with a concave interior, not a container with a dispensing opening and a concave rigid application surface located adjacent said opening. Having the rigid application surface separate from the container holding the styptic is advantageous in order to store a large amount of styptic material and yet be able to apply only the needed amount when required by using the application surface. Dietz does not teach this.

Therefore, the Applicant respectfully submits that Dietz does not meet the limitations of claim 12 and that the rejection should be removed. Furthermore, claims 16 and 17 are in condition for allowance by virtue of their dependence upon allowable claim 12.

#### **4. The rejections under 35 U.S.C. § 103(a)**

Claim 18 was rejected in the Office Action under 35 U.S.C. §103(a), as being obvious in view of Dietz. The Applicant respectfully submits that each and every limitation of claim 18 is not met even in light of the obvious argument made.

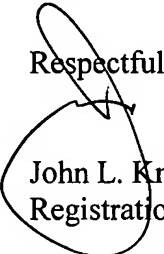
To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). "All words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 1385, 265 USPQ 494, 496 (CCPA 1970). If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988).

The Office Action argues that the walls in Dietz appear to be within the range required by claim 18 and even if they are not such a range would have been obvious. As noted above in section 3 of this paper, Dietz does not disclose having a separate rigid application surface. Therefore, even if such a range were obvious the limitations of claim 12 from which claim 18 depends would not be met.

**5. Conclusion**

The Applicant has made an earnest effort to place this application in condition for allowance. If the Examiner feels that a telephone interview would expedite prosecution of this patent application, he is respectfully invited to telephone the undersigned at 215-599-0600.

Respectfully submitted,

  
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Date: June 9, 2005

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